

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

Norfolk Southern Railway Company,

Plaintiff,

v.

Cycle Up Supply Chain Services, LLC n/k/a  
CUSCS Holdings, LLC, and Consultative Sales  
Professionals, LLC d/b/a Cycle Up Supply  
Chain Services

Defendants.

CIVIL ACTION NO.

**VERIFIED COMPLAINT**

Plaintiff Norfolk Southern Railway Company (“Norfolk Southern”), by and through its attorneys, files this Verified Complaint against Defendants Cycle Up Supply Chain Services, LLC n/k/a CUSCS Holdings, LLC, and Consultative Sales Professionals, LLC d/b/a Cycle Up Supply Chain Services (referred to collectively as “Cycle Up”) and in support thereof, avers as follows:

**PARTIES**

1. Norfolk Southern is a corporation incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Atlanta, Georgia.

2. Norfolk Southern operates as an interstate rail carrier subject to the jurisdiction of the U.S. Surface Transportation Board (“STB”), and is governed by the provisions of the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*

3. Cycle Up Supply Chain Services, LLC n/k/a CUSCS Holdings, LLC is a limited liability company organized and existing under the laws of the State of Florida and has its principal place of business in Ormond Beach, Florida.

4. Consultative Sales Professionals, LLC d/b/a Cycle Up Supply Chain Services is a limited liability company organized and existing under the laws of the State of Florida and has its principal place of business in Savannah, Georgia.

5. Upon information and belief, no members of Cycle Up are domiciled in the Commonwealth of Virginia or the State of Georgia.

### **JURISDICTION**

6. Jurisdiction is based upon 28 U.S.C § 1337 as this is a cause of action arising under the Interstate Commerce Act, 49 U.S.C. §§ 10101 *et seq.*, and specifically 49 U.S.C. § 10746.

7. In the alternative, jurisdiction is also based upon 28 U.S.C. § 1332 as the plaintiff and defendant are citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

### **VENUE**

8. Venue properly lies in this district pursuant to 28 USC § 1391(b) because Cycle Up is subject to personal jurisdiction in this judicial district, and a substantial part of the events or omissions giving rise to the Norfolk Southern's claims occurred in this judicial district.

### **CAUSE OF ACTION** **Failure to Pay Demurrage Charges**

9. Pursuant to 49 U.S.C. § 10746, Norfolk Southern established rules related to the assessment and computation of rail car demurrage and rail car storage charges ("Demurrage Charges").

10. The rules, which set forth the manner in which Demurrage Charges are accrued and assessed, are set out in Norfolk Southern's Freight Tariff NS 6004-D, Freight Tariff NS 8002-A and Conditions of Carriage (collectively "Tariffs"), which are public documents filed with the Surface Transportation Board ("STB") and posted on the internet at [www.nscorp.com](http://www.nscorp.com).

11. In addition, Rule 300 of Norfolk Southern's Conditions of Carriage sets forth the manner in which finance charges associated with credit extensions are accrued and accessed.

12. Between May of 2022 and January of 2023, pursuant to the terms of Norfolk Southern's Tariffs, Norfolk Southern agreed to and did release railcars into the possession of Cycle Up, and Cycle Up accepted delivery of said railcars.

13. Prior to the delivery of the aforementioned railcars, Norfolk Southern provided Cycle Up with the requisite notice of Norfolk Southern's Tariffs and rates for services and Cycle Up has acknowledged receipt.

14. Between May of 2022 and January of 2023, Cycle Up failed to return possession of railroad-controlled rail cars to Norfolk Southern within the allotted "free time" period prescribed by Norfolk Southern's Tariffs. Accordingly, Cycle Up has incurred Demurrage Charges by and through Norfolk Southern's Tariffs through January of 2023, as follows:

Freight Bill No.	Waybill No.	Waybill Date	Amount Billed	Amount Paid	Net Amt. Due
1130174636	901587	5/9/2022	\$6,450.00	\$0.00	\$6,450.00
1161191302	901585	6/9/2022	\$10,950.00	\$0.00	\$10,950.00
1194175880	901564	7/12/2022	\$61,200.00	\$0.00	\$61,200.00
1222179851	901571	8/9/2022	\$85,500.00	\$0.00	\$85,500.00
1256177491	901598	9/12/2022	\$173,400.00	25,000.00	\$148,400.00
1284167836	901566	10/10/2022	\$4,050.00	\$0.00	\$4,050.00
1346512446	901566	12/12/2022	\$5,550.00	\$0.00	\$5,550.00
2013167497	901545	1/12/2023	\$1,800.00	\$0.00	\$1,800.00
<b>Total</b>					<b>\$323,900.00</b>

15. Norfolk Southern submitted invoices to Cycle Up for the Demurrage Charges, and Cycle Up received said invoices. True and accurate copies of the invoices for the Demurrage Charges are attached hereto as **Exhibit A**.

16. Cycle Up incurred Demurrage Charges in the amount of \$348,900. Cycle Up made one payment for these charges in the amount of \$25,000, leaving the current balance due of \$323,900, plus interest, finance charges, costs and fees.

17. Norfolk Southern has not agreed to any exemption from demurrage for Cycle Up and has invoiced and demanded payment for the subject charges. On August 19, 2024, undersigned counsel for Norfolk Southern sent correspondence to Cycle Up demanding prompt payment of the Demurrage Charges and finance charges due and owing to Norfolk Southern. A true and correct copy of the August 19, 2024, demand correspondence is attached hereto as **Exhibit B**.

18. Norfolk Southern has performed all conditions precedent necessary to be entitled to payment of the Demurrage Charges from Cycle Up.

19. Despite demands for payment, to date, Cycle Up has failed and/or refused to pay the Demurrage Charges which remain due and owing to Norfolk Southern.

20. In addition, Cycle Up is liable to Norfolk Southern for certain additional Demurrage Charges and finance Charges which continue to accrue pursuant to Norfolk Southern's Tariffs and Rule 300 of Norfolk Southern's Conditions of Carriage.

**WHEREFORE**, Plaintiff Norfolk Southern Railway Company respectfully demands that judgment be entered in its favor and against Defendant Cycle Up Supply Chain Services, LLC in an amount not less than \$323,900.00, in addition to any additional Demurrage Charges and finance charges which may accrue up until the time of trial, along with prejudgment interest, costs and

attorneys' fees, as required by Norfolk Southern's Conditions of Carriage and other tariffs, and such other relief as the Court may deem proper.

This, the 15<sup>th</sup> day of January, 2025.

Respectfully submitted,

**GALLIVAN, WHITE & BOYD P.A.**

*/s/ Lane C. Gardner*

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**AND**

**GALLIVAN, WHITE & BOYD P.A.**

*/s/ Ronald K. Wray, II*

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**ATTORNEYS FOR PLAINTIFF THE  
NORFOLK SOUTHERN RAILWAY  
COMPANY**

*\*Motion to appear pro hac vice forthcoming*

**VERIFICATION**

I, Kelley Childs, do hereby swear and affirm that I am the Assistant Manager - Revenue Accounting Customer Services for Norfolk Southern Railway Company, and am competent to testify and verify the allegations contained in the Verified Complaint and that they are true and accurate to the best of my knowledge and that, if called as a witness, I can testify to the same.

1/7/2025  
Date

NORFOLK SOUTHERN RAILWAY COMPANY

By: Kelley Childs

Its: Assistant Manager - Revenue Accounting  
Customer Services

Sworn to and Subscribed before me this  
7<sup>th</sup> day of January 2025.

Shawna Miller  
Notary Public for Fulton County, GA  
My Commission expires: 08-23-2027

